



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.09.2020

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD)No.13945 of 2010 and

WMP (MD) No.1 of 2010

WEB COPY

B.Radha Sankar

: Petitioner

Vs.

1.The Sankar Nagar Special
Grade Town Panchayat,
Rep by its Executive Officer,
Sankar Nagar,
Tirunelveli.

2.Pechipandian,
Chairman,
Sankar Nagar Special
Grade Town Panchayat,
Sankar Nagar,
Tirunelveli.

3.The District Collector,
Tirunelveli

: Respondents

(R3 is suo motu impleaded vide Court order dated 19.12.2016 in WP (MD)No.13945 of 2010)

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the first respondent culminating in the order bearing reference Naa.ka.No.272/2005 dated 16.11.2007 (signed on 16.11.2010) quash the same.

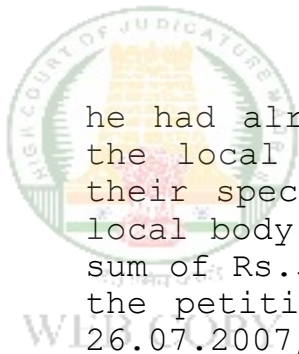
For Petitioner : Mr.T.Mohan for Mrs.D.Geetha
For R3 : Mr.S.Angappan
Government Advocate

For R1 & R2 : Mr.K.Mahendran

O R D E R

Heard the learned counsel on either side.

2.The petitioner was one of the promoters of the petition mentioned property. The layout approval was granted on certain conditions. One condition was that the petitioner can develop the Roads himself and hand over the same to the local body or he can bear the development charges. The stand of the petitioner was that

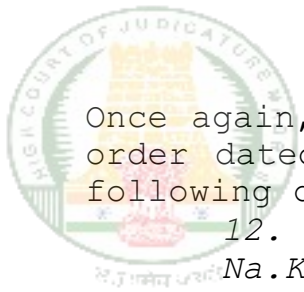


he had already formed the roads and gifted the same. The stand of the local body was that the petitioner did not form Roads as per their specifications and he must bear the development charges. The local body raised demand on the promoters calling upon them to pay a sum of Rs.5,83,750/-. This was questioned by the promoters including the petitioner herein in W.P.(MD) No.3466 of 2017. By order dated 26.07.2007, the Writ Petition was disposed of with certain directions. The relevant portion in the said order is as under:-

"4.Considering the conflicting character of this communication, it is necessary for the Collector, Tirunelveli to intervene and enquire into the matter and find out as whether the development charges need to be paid by the petitioners. If so, what is the original state of affairs and the development charges payable by the petitioners if any, shall be intimated by the District Collector, Tirunelveli to the petitioners. In the event of the Collector finding that the petitioners need to pay any amount I.e development charges, the same should be paid within a time frame to be fixed by the Collector. The petitioners shall given an undertaking before the Collector to the effect that they would abide by the directions of the Collector on the payment in any of the development charges account. On production of a copy of the letter with an acknowledgment thereon from the Collecotr, the Registrar shall register the documents and release the same to the petitioners. The learned counsel for the petitioners submits that the petitioners are willing to give such an undertaking, as may be required, to safeguard the interests of the Panchayat.

5.In the light of the said submissions made, the Sub Registrar is direct to register the documents and release the same. The District Collector, Tirunelveli shall conduct an enquiry and find out the real state of affairs as regards the development charges payable by the petitioners. The petitioner are hereby directed to give an undertaking forthwith within a peiroad of two weeks from the date of receipt of this order and on such undertaking, the Sub Registrar shall register of documents and release the same. The District Collector, Tirunelveli shall pass orders within a period of four weeks from the date of receipt of a copy of this order.'"

After such remand, the District Collector, Tirunelveli passed an order dated 05.11.2007, in which, the earlier demand was reiterated.



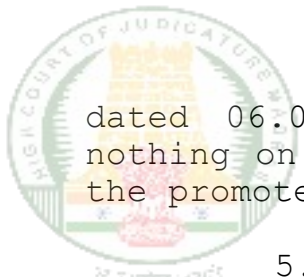
Once again, it was put to challenge in W.P(MD) No.10270 of 2007. By order dated 28.11.2008, the Writ Petition was disposed of with the following directions:-

12. The impugned proceedings dated 05.11.2007 in Na.Ka.No.2786/07/Pa3 of the first respondent is quashed and the matter is remitted back to the first respondent, viz., the District Collector with the direction that he shall take the assistance of a Engineer, who shall afresh consider the realities on ground and accordingly submit a report to the first respondent, who shall furnish a copy of it to the petitioner, granting a week time to submit his objections and thereupon within fifteen days, the first respondent shall pass orders order giving due opportunity of being heard to the petitioner.

Thereafter, the impugned communication dated 16.11.2007 came to be issued by the local body, whereby, the petitioner was called upon to pay a sum of Rs.17,63,828/-. Questioning the same, this Writ Petition was filed.

3. The learned counsel appearing for the local body pointed out that this communication is based on the order dated 06.09.2010 passed by the then District Collector, Tirunelveli. Thereafter, this Court *suo motu* impleaded the District Collector, Tirunelveli. The District Collector, Tirunelveli has filed a Counter affidavit, seeking dismissal of this Writ Petition. Though the learned counsel on either side stuck to their respective positions, I am of the view that the issue on hand can be disposed of on a very short ground. W.P(MD) No.10270 of 2007 was disposed of by directing the District Collector, Tirunelveli to furnish a copy of the report to the promoters, eliciting their written response and thereafter pass order within 15 days. It was also stated that the promoters should be given due opportunity of being heard. It is now seen that though the District Collector, Tirunelveli passed the order on 06.09.2010, it was done without furnishing a copy of the Engineer's Report to the promoters. The Counter affidavit now filed by the District Collector, Tirunelveli states that the copy of the Engineer's Report was given to one Sri.Baskara Narayanan, brother of the petitioner on 30.09.2010. The said Baskara Narayanan had filed an affidavit stating that he was not served with the copy of the Engineer's Report. It is seen from the material on record that the sequence stipulated by this Court was not adhered to by the then District Collector, Tirunelveli.

4. Of course, the learned counsel for the local body would point out that the order dated 06.09.2010 made it clear that it was open to the promoters to lodge their objections within seven days. It is now the stand of the Authorities that the petitioner did not lodge any objection. The petitioner also stated that even the order



dated 06.09.2010 was not served. I must observe that there is nothing on record to show that the said order was served on any of the promoters.

5. Therefore, I have no hesitation to conclude that the impugned order is in clear breach of the directions given by this Court in W.P.(MD) No.10270 of 2007. In this view of the matter, the orders impugned in this Writ Petition stand quashed. The learned Additional Government Pleader appearing for the 3rd respondent undertakes that within a week from the date of receipt of a copy of this order, he would serve the Engineer's report on the counsel who now appears for the Writ petitioner. The petitioner is given exactly two weeks time thereafter to lodge his objection. Since it has already been directed that the petitioner will be given an opportunity of being heard, the District Collector, Tirunelveli is directed to give an opportunity of personal hearing to the petitioner and thereafter pass orders, as directed in W.P.(MD) No. 10270 of 2007. At this stage, the petitioner's counsel states that all his contentions should be left open. The learned counsel appearing for the local body draws my attention to the undertaking given by the promoters before this Court in W.P.(MD) No.3466 of 2007, I have already extracted paragraph 4 of the said order.

6. The contentions of both petitioner and the respondents are left open. I am not giving any finding thereon. The Writ Petition is allowed accordingly. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (P&A)

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/ /2020

Sub Assistant Registrar(CS)

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Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To:

1.The Executive Officer,
The Sankar Nagar Special
Grade Town Panchayat,
Sankar Nagar,
Tirunelveli.

2.The District Collector,
Tirunelveli.

+1 CC to M/s.GP (SR-16250[F] dated 08/09/2020)

W.P. (MD)No.13945 of 2010 and
WMP (MD) No.1 of 2010
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CS (14.09.2020) 5P 4C